

Bundesrepublik Deutschland

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POLICY DIVISION

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Federal Communications Commission  
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**Notice of Proposed Rulemaking;  
Foreign-Affiliated Entities: In the Matter of Market Entry and Regulation**

Dear Mr Chairman, Dear Mr Hundt

At the G7 Information Society Conference of Ministers of Industry and Telecommunications there was common understanding that open markets and national treatment were essential prerequisites for the development of a global information society.

The federal government will fully comply with this principle with regard to the opening up of markets by opening to competition the provision of telecommunications services in long-distance, local and international traffic including network infrastructures as from 1998.

I shall pass on and explain to you in person in Washington on 3 April 1995 the details of this liberalization concept which is fully in line with the EU Council Resolutions of 22 July 1993 and 17 November 1994.

Regarding the obligations under the OECD Code of Liberalization of Capital Movements the Federal Republic has confirmed all liberties in telecommunications and hence fully grants national treatment to foreign investors. That we fulfil the said obligation can currently be seen in the participation of foreign companies in German digital cellular mobile radio operators such as D2 and E-plus or in private satellite operators. This means that no restrictions apply to foreign participation in German telecommunications companies in markets that have already been opened to competition.

Following the complete opening up of markets in 1998 foreign investors will be able to claim full national treatment in all telecommunications markets.

Against this background, the federal government is concerned about the latest developments in the US telecommunications policy according to which the FCC intends to issue a rule on "Foreign-Affiliated Entities: In the Matter of Market Entry and Regulation."

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According to the Notice of Proposed Rulemaking, US telecommunications licences will face severe regulatory intervention if foreign companies contribute more than 10% capital to the relevant US companies providing telecommunications services (Section 214). Such intervention is specifically directed to the provision of telecommunications traffic from the United States to other countries. These regulatory measures confront potential foreign investors in US telecommunications companies with substantial entrepreneurial risks. We have therefore reason to believe that the planned potential of possible intervention and requirements will lead German companies to be reluctant to invest in US common carriers. Neither can it be ruled out that US common carriers will oppose foreign participation or the conclusion of joint venture agreements with mutual capital shares for fear of restrictions expected on their licences.

In the light of the rapidly growing globalization of telecommunications services in the future and the related necessary worldwide cooperation and division of entrepreneurial opportunities and risks, the planned regulatory instruments pose tremendous threats to the further development of an open world trade from our point of view.

In this context it should also be pointed out that there have been market access restrictions for a long time now under Section 310 of the Federal Communications Act in respect of US carriers operating radio systems. In the past the federal government has always advocated liberalizing Section 310 regulations as well. The urgent necessity of such a step is shown by the fact that several US companies hold major stakes in German telecommunications companies at present whereas the possibility for German telecommunications companies to participate in US carriers is limited due to existing as well as proposed US rules. This imbalance would presumably be further strengthened by the planned restriction on foreign participation in the USA on the one hand and by the planned market opening in Germany while fully maintaining the principle of national treatment on the other.

The federal government hence considers both the "Notice of Proposed Rulemaking" and Section 310 regulations to be barriers on the road to developing the information society. Both regulations are not compatible with the agreement reached at the G7 Conference on basic principles for the establishment of an information infrastructure in Brussels on 24 and 25 February 1995. The economic and regulatory aspects of the resolutions adopted there, amongst other things, on research and development, on new applications and finally on the access to national markets cannot, therefore, be separated from each other.

While market access for domestic companies is basically free in US telecommunications markets, Vice-President Al Gore proposed at the G7 Conference to make national treatment for foreign companies contingent upon reciprocal market access and competitive conditions. The procedures and negotiations necessary for determining such conditions could further inhibit the willingness of foreign companies to invest in the United States and could stifle competition on US and international markets to the detriment of the customer. That is why the federal government would welcome it if all countries could abstain from restrictive regulation for foreign companies and from the necessity to hold difficult and time-consuming reciprocity negotiations.

Sincerely yours

Dr Wolfgang Bötsch

